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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re	)	Case No. 09-33232-rld13
	)	
Tracy and Colleen Wadley,	)	<b>DEBTORS' MOTION FOR ORDER OF</b>
	)	<b>CONTEMPT</b>
Debtors.	)	
	)	

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**CERTIFICATION**

Pursuant to LBR 7007-1, I certify that Bank of America, N.A. ("creditor") has not returned my written request to discuss this matter.

Debtors have no choice but to prosecute this motion to stop creditor's contemptuous conduct.

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**DEBTORS' MOTION FOR ORDER OF CONTEMPT** - Page 1

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**MOTION**

Pursuant to 11 U.S.C. § 105, debtors Tracy and Colleen Wadley, through their trial attorney Michael Fuller, move this Court for an order holding creditor in contempt of the discharge order and injunction entered on July 27, 2012, pursuant to 11 U.S.C. § 524.

Debtors request an order allowing discovery and setting a full day evidentiary hearing so they may justify mild sanctions and prove damages, attorneys fees and costs.

Debtors support this motion with the attached memorandum, declaration and exhibits.

Dated: January 9, 2013

/s/ Michael Fuller  
Michael Fuller, OSB #09357  
Trial Attorney for Debtors

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re	)	Case No. 09-33232-rld13
	)	
Tracy and Colleen Wadley,	)	<b>LEGAL MEMORANDUM</b>
	)	
Debtors.	)	<b>IN SUPPORT OF DEBTORS' MOTION</b>
	)	<b>FOR ORDER OF CONTEMPT</b>

**INTRODUCTION**

Bank of America, N.A. ("creditor") continues to harass debtors by reporting false derogatory information about them to the credit reporting agencies.

Creditor refuses to take corrective action and has not responded to correspondence from debtors' counsel.

Creditor's harassment is intentional and occurs after it had actual prior notice of the discharge order.

Debtors prosecute this matter as follows:

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**LEGAL MEMORANDUM IN SUPPORT OF DEBTORS' MOTION FOR ORDER OF CONTEMPT** - Page 1

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**FACTUAL ALLEGATIONS**

**I. Bankruptcy Case**

On April 30, 2009 debtors filed for chapter 13 bankruptcy protection in this Court. [Bankruptcy Court Docket Document No. 1] Debtors' bankruptcy schedules listed Bank of America and Countrywide Home Loans. [*Id.* at Document No. 11]

Bank of America and Countrywide Home Loans received actual written notice of debtors' bankruptcy case. [*Id.* at Document No. 6]

**II. Discharge Order**

On July 27, 2012, this Court issued a discharge order in debtors' case. [*Id.* at Document No. 45]

In or around July 2012 Bank of America and Countrywide Home Loans received actual written notice of the discharge order. [*Id.* at Document No. 46]

In or around December 2012, creditor received actual written notice of the discharge order, attached to a letter from debtors' counsel requesting a reply from creditor's attorney. [Debtors' Exhibit 1]

**III. Creditor's Intentional Post-Discharge Collections**

Creditor furnishes and fails to correct false derogatory information concerning a claim discharged in debtors' bankruptcy case. [Debtors' Exhibit 2]

Debtors intend to prove economic and non-economic damages resulting from the contempt at trial.

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**LEGAL MEMORANDUM IN SUPPORT OF DEBTORS' MOTION FOR ORDER OF CONTEMPT** - Page 2

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## **LEGAL POINTS AND AUTHORITIES**

### **I. Legal Standard for Discharge Violations**

Section 524 of the Bankruptcy Code provides a broad injunction against a wide range of creditor activities, including post-discharge false credit reporting. 4 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* § 524.02[2] (16th ed. 2012); *In re Torres*, 367 B.R. 478 (Bankr. S.D.N.Y. 2007).

To obtain an order of contempt under § 524, a debtor must prove that a party had knowledge of the discharge order and intended the conduct that violated the injunction. *ZiLOG, Inc. v. Corning*, 450 F.3d 996, 1007 (9th Cir. 2006).

The contents of the discharge order are unambiguous and fixed by statute. *In re Moncur*, 328 B.R. 183, 191 (9th Cir. B.A.P. 2005).

To recover sanctions, a debtor must show clear and convincing evidence the discharge injunction was violated. *Renwick v. Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002).

### **II. § 524 Violations are Only Properly Brought by Motion**

A contempt proceeding for violation of the discharge order is properly brought by motion. *Barrientos v. Wells Fargo Bank*, 633 F.3d 1186, 1191 (9th Cir. 2011).

### **III. Remedies**

Violation of the discharge order entitles an aggrieved debtor to compensatory civil contempt remedies, including declaratory relief, economic and non-economic damages, attorneys fees and costs, and mild sanctions. *Walls v. Wells Fargo Bank*, 276 F.3d 502, 507 (9th Cir. 2002); *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1193 (9th Cir. 2003).

**LEGAL MEMORANDUM IN SUPPORT OF DEBTORS' MOTION FOR ORDER OF CONTEMPT** - Page 3

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**ARGUMENT**

**I. Clear and Convincing Evidence Establishes Creditor is in Contempt**

This Court should hold creditor in civil contempt because the elements of civil contempt are met, as (1) creditor received various actual written notices of the discharge order, (2) the terms of the discharge order are unambiguous and familiar to creditor, and (3) creditor intends the actions that result in the continuation of false credit reporting and refuses to remedy its contempt.

**II. Debtors Should be Awarded Damages**

Debtors should be compensated for their economic and non-economic damages, including reimbursement of reasonable attorneys fees and costs necessary to prosecute the matter.

Further, this Court should mildly sanction creditor so it becomes profitable for it to follow the orders of this Court in the future.

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**LEGAL MEMORANDUM IN SUPPORT OF DEBTORS' MOTION FOR ORDER OF CONTEMPT** - Page 4

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**WHEREFORE**, debtors pray for the following:

- A. An order holding creditor in contempt of this Court's discharge order;
- B. An award of damages, including the reasonable attorneys fees and costs necessary to prosecute the matter; and
- C. An award of mild sanctions.

Dated: January 9, 2013

/s/ Michael Fuller  
Michael Fuller, OSB #09357  
Trial Attorney for Debtors

**LEGAL MEMORANDUM IN SUPPORT OF DEBTORS' MOTION FOR ORDER OF CONTEMPT** - Page 5

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re ) Case No. 09-33232-rld13  
)  
Tracy and Colleen Wadley, ) **DECLARATION OF MICHAEL**  
) **FULLER**  
)  
Debtors. ) **IN SUPPORT OF DEBTORS' MOTION**  
) **FOR ORDER OF CONTEMPT**

**DECLARATION**

I, Michael Fuller, declare the following under penalty of perjury:

1. I am over the age of 18 and have personal knowledge of the facts I am testifying to in this declaration.
2. I am debtors' trial attorney in the above-captioned case.
3. Attached to this declaration as "Exhibit 1" is a true and correct copy of correspondence served on Bank of America, N.A. and a certified mail return receipt. Attached to the correspondence was a copy of the discharge order entered in debtors' bankruptcy case.
4. Attached to this declaration as "Exhibit 2" is a true and correct copy of excerpts from credit reports provided to me by my clients.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 9, 2013

/s/ Michael Fuller  
Michael Fuller

**DECLARATION OF MICHAEL FULLER** - Page 1

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**Michael Fuller**  
**Consumer Protection Group**



**OlsenDaines**  
*Attorneys at Law*

**Attorneys**

Eric W. Olsen \*\*^  
Dwayne R. Murray \*  
Lars H. Olsen \*  
Rex K. Daines \*\*  
Kevin D. Swartz \*  
D. Neal Peton \*  
Matthew A. Casper \*  
Michael R. Fuller \*  
Michael Sperry ^  
Kris Sperry ^  
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**Website**

www.OlsenDaines.com/cpg

*"Proudly protecting the rights of  
consumers for over 30 years"*

DELIVERED VIA CERTIFIED MAIL

December 15, 2012

BANK OF AMERICA, NATIONAL ASSOCIATION  
100 NORTH TRYON STREET, SUITE 170  
CHARLOTTE, NC 28202

**RE: Notice of Representation**  
**Tracy and Colleen Wadley**  
**Account No. 16923XXXX**

Ladies and Gentlemen,

I represent the Wadleys.

My clients dispute the above-named account and debt with you. Specifically, they dispute the derogatory false status as furnished to the credit reporting agencies.

These matters can usually be resolved with a simple phone call. Please have your attorney call me directly to discuss.

This matter is urgent, as my clients are trying to obtain financing.

Thank you.

Sincerely,

/s/ Michael Fuller \*\*

Michael Fuller  
Trial Attorney

Enclosure: Certificate of Notice of Discharge  
District of Oregon Case No. 09-33232-rld13

\*\* Expedited letter – dictated but not read

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BANK OF AMERICA,  
NATIONAL ASSOCIATION  
100 NORTH TRYON STREET,  
SUITE 170  
CHARLOTTE, NC 28202

2. Article Number

(Transfer from service label)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

x Pitney Bowes on behalf of ☐ Agent  
Bank of America ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail  
☐ Registered ☒ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7011 2970 0003 2873 2996

COLLEEN A WADLEY  
Report As Of: 1/1/2013



## Credit Cards, Loans & Other Debt

Here you will find specific information on each account you opened, including current status and any past due information. Positive credit information remains on your report indefinitely. Creditor contact information has been provided in order to make it easier for you to resolve any issues.

### BANK OF AMERICA, N.A.



800-451-6362

4161 PIEDMONT PKWY  
GREENSBORO, NC 27410

**Account Name** BANK OF AMERICA, N.A.  
**Account #** 16923XXXX  
**Account Type** Second Mortgage  
**Balance** \$0.00  
**Past Due** \$0.00  
**Date Opened** 3/1/2007  
**Account Status** Closed  
**Mo. Payment**  
**Payment Status** Charge-off  
**High Balance**  
**Limit**  
**Terms** 30 Months  
**Comments**



### Equifax

**Account Name** BANK OF AMERICA, N.A.  
**Account #** 16923XXXX  
**Real Estate** \$56,309.00  
**Past Due** \$12,850.00  
**Date Opened** 3/1/2007  
**Account Status** Open  
**Mo. Payment** \$475.00  
**Payment Status** At least 120 days or more than four payments past due  
**High Balance** \$56,600.00  
**Limit**  
**Terms**  
**Comments** REAL ESTATE MORTGAGE  
SECOND MORTGAGE

### TransUnion

**Account Name** BK OF AMER  
**Account #** 16923XXXX  
**Account Type** Mortgage account  
**Date Opened** 3/26/2007  
**Account Status** Open  
**Mo. Payment** \$475.00  
**Payment Status** 120 days past due  
**High Balance** \$56,600.00  
**Limit**  
**Terms** 360 Months  
**Comments**

### 24/Mo Payment History

	2008						2009						2010											
Month	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
Experian	60	90	120	120	120	120	ND	ND	ND	KD														
Equifax	60	90	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120
TransUnion	60	90	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120

### BANK OF AMERICA



Potentially Negative Closed

800-421-2110

4060 OGLETOWN/STANTON RD  
DE5-019-03-07  
NEWARK, DE 19713

**Account Name**  
**Account #**  
**Account Type**  
**Balance**  
**Past Due**  
**Date Opened**  
**Account Status**  
**Mo. Payment**  
**Payment Status**  
**High Balance**  
**Limit**  
**Terms**  
**Comments**



### Equifax

**Account Name** BANK OF AMERICA  
**Account #** 37463299979XXXX

**Date Opened** 7/1/2007  
**Account Status** Closed

INCLUDED IN BANKRUPTCY

ACCOUNT TRANSFERRED OR SOLD  
CREDIT CARD

### TransUnion

### 24/Mo Payment History

	2007						2008						2009											
Month	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY
Experian																								
Equifax		OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
TransUnion																								

Comments:

**24-Month Payment History**

Date: Oct Nov Dec Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan Feb Mar Apr May Jun Jul Aug Sep  
 10 10 10 11 11 11 11 11 11 11 11 11 11 11 11 11 12 12 12 12 12 12 12 12  
**Experian:** OK OK OK OK OK ND ND  
**Equifax:** OK OK OK OK OK OK  
**TransUnion:** OK OK OK OK OK OK  
**BK OF AMER**

	EXPERIAN	EQUIFAX	TRANSUNION
Account Name:	BANK OF AMERICA, N.A.	BANK OF AMERICA, N.A	BK OF AMER
Account Number:	16923XXXX	16923XXXX	16923XXXX
Acct Type:	Second Mortgage	Real Estate	Mortgage account
Acct Status:	Closed	Closed	Open
Monthly Payment:		\$475.00	\$475.00
Date Open:	3/1/2007	3/1/2007	3/26/2007
Balance:	\$0.00	\$0.00	
Terms:	30 Months		360 Months
High Balance:		\$56,600.00	\$56,600.00
Limit:		\$0.00	
Past Due:			120 days past due
Payment Status:	Debt included in or discharged through Bankruptcy Chapter 13	Making regular payments under W.E.P. ACCOUNT INVOLVED IN CHAPTER 13 DEBT ADJ REAL ESTATE MORTGAGE	

Comments:

**24-Month Payment History**

Date: Dec Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov  
 10 11 11 11 11 11 11 11 11 11 11 11 11 12 12 12 12 12 12 12 12 12 12  
**Experian:**  
**Equifax:** OK  
**TransUnion:**  
**BK OF AMER**

	EXPERIAN	EQUIFAX	TRANSUNION
Account Name:	BANK OF AMERICA, N.A.	BANK OF AMERICA, N.A	BK OF AMER
Account Number:	2900XXXX	2900XXXX	2900XXXX
Acct Type:	FHA Real Estate Loan	Real Estate	Mortgage account
Acct Status:	Closed	Closed	Closed
Monthly Payment:		\$0.00	\$0.00
Date Open:	4/1/2003	4/1/2003	4/21/2003
Balance:		\$0.00	\$0.00
Terms:	360 Months		360 Months
High Balance:		\$178,956.00	\$178,956.00
Limit:		\$0.00	\$0.00
Past Due:			
Payment Status:	Paid satisfactorily	Pays account as agreed	Paid or paying as agreed
Comments:	Credit line closed-consumer request-reported by subscriber	REAL ESTATE MORTGAGE	Account closed by consumer

**24-Month Payment History**

Date: Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan Feb